



**NEVADA COMMISSION ON ETHICS  
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION  
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION No. 05-44	REQUEST FOR OPINION No. 05-45
SUBJECT: JIM BENTLEY GENERAL MANAGER INDIAN HILLS GENERAL IMPROVEMENT DISTRICT DOUGLAS COUNTY	SUBJECT: CHARLES SWANSON, CHAIR BOARD OF TRUSTEES INDIAN HILLS GENERAL IMPROVEMENT DISTRICT DOUGLAS COUNTY

**A. JURISDICTION:**

In his capacity as General Manager for the Indian Hills General Improvement District, Jim Bentley was a “public employee” as defined by NRS 281.436 until August 3, 2005. As such, the Ethics Commission has jurisdiction over this complain (RFO 05-44).

In his capacity as a member and Chairman of the Board of Trustees for the Indian Hills General Improvement District, Charles Swanson is a public officer as defined by NRS 281.4365. As such, the Ethics Commission has jurisdiction over this complaint (RFO 05-45).

**B. REPORT OF INVESTIGATIVE ACTIVITIES:**

- Reviewed Jurisdictional Memoranda, RFO 05-44 & RFO 05-45 (TAB B)
- Reviewed Requests for Opinion 05-44 & 05-45 received July 15, 2005 (TAB C)
- Reviewed Charles Swanson response received August 11, 2005 (TAB D)
- Reviewed Agendas, Minutes and attachments for the Indian Hills General Improvement District Board of Trustees Regular Meetings held on May 19, June 15, July 20, and August 29, 2005 and Special Meetings held on July 28, and August 4, 2005 (excerpted) (TAB E)
- Reviewed news articles in the *Nevada Appeal* regarding the Indian Hills General Improvement District General Manager staff position

**C. RECOMMENDATIONS:**

Based on investigative activities, the Executive Director recommends the Panel find that just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481 (2)
- NRS 281.481 (3)
- NRS 281.481 (9)
- NRS 281.481 (10)
- NRS 281.501 (2)
- NRS 281.501 (4)
- NRS 281.505

**SPECIFIC REASON:**

There are no allegations or credible evidence of fact that amounts to or supports a violation by any public officer or public employee of the above provisions of NRS Chapter 281.

**D. SUMMARY OF REQUEST FOR OPINION:**

The complaints, filed on July 15, 2005, allege violations of NRS 281.481(2), NRS 281.481(3), NRS 281.481(9), NRS 281.481(10), NRS 281.501(2), NRS 281.501(4), and NRS 281.505 by Jim Bentley, General Manager, and Charles Swanson, Chair, Board of Trustees, Indian Hills General Improvement District (GID) located in Douglas County. The complaints allege that Bentley and Swanson violated the Nevada Ethics in Government Law by creating a situation that would allow Bentley to resign his position and be released from his contract as general manager with severance benefits, while Swanson, through his position as a Board Trustee, would secure an employment contract as the interim general manager of Indian Hills GID. The complaint further alleges that Bentley's resignation and Swanson's potential employment contract were not separate proceedings but were related, appearing to be parts of the same issue.

**E. SUMMARY OF SUBJECTS' RESPONSES:**

As of May 3, 2006, Bentley has not submitted a response to the complaint nor a Waiver of Statutory Time Requirement.

Swanson submitted a Waiver of Statutory Time Requirement dated August 4, 2005.

In his response received August 11, 2005, Swanson stated that he does not believe an investigation or opinion is necessary. The board acted separately on each issue. The resignation was not dependant upon Swanson's proposal to become the interim general manager. Swanson stated that he disclosed and recused himself when it was appropriate to do so. Specifically, Swanson provided the following information:

- The request for Opinion No. 05-45 was premature in that the request was made prior to any action taken by him on this matter.
- When the matter was presented to the Board of Trustees, he properly disclosed his interest and recused himself in the Board's consideration of his proposal to act as interim general manager.
- There is no direct connection between the resignation of General Manager Bentley and Swanson's offer to act as temporary general manager. Swanson's discussion with Bentley concerning Bentley's proposal to resign occurred over a period of several months. Swanson's offer to provide interim management was made to the Board of Trustees at the July 20, 2005, meeting.
- May 2005 one of the other Trustees informed Swanson that General Manager Bentley was seeking to terminate his contract. In his role as Board Chairman, Swanson discussed the issues with Bentley. Swanson and Bentley discussed the proposal for resignation and options such as elimination of the General Manager's position and organizational restructuring. These items were placed on the May 19, 2005 regular Meeting Agenda. At that meeting, Swanson expressed his concern that the District would need to have someone in charge.
- At the June 15 regular Board Meeting, Bentley formally presented his resignation offer with a specific buy-out package that the Board did not accept.
- At the beginning of July, Swanson began to formulate an interim solution to what he believed would be a lack of leadership, developed an outline of his proposal, and forwarded it to Bentley for review. It is Swanson's understanding that Bentley discussed any legal consequences of Swanson's interim management proposal with the District's General Counsel Scott Brooke from the Law Firm of Brooke, Shaw & Zumpft.
- At the July 20 regular Board Meeting, Bentley again raised the issue of his resignation offer with a specific buy-out package. At that time, Swanson disclosed that he was considering making an offer to aid the District in the interim if Bentley resigned. The Board voted not to accept Bentley's resignation offer by a 3-2 vote. However, at the end of the meeting, Bentley submitted his resignation without a buyout. The Board voted to accept the resignation without a buyout, 4-1.
- At the July 28 special Board Meeting, the issue of the District's management was discussed. Swanson recused himself from the Board and presented his proposal to act as interim manager. The Board discussed the issue and took no action on his proposal. He re-assumed the Chair, and asked two Board members to interview existing District employees attending the meeting for an interim management structure.
- On August 4, a second special Board Meeting was held, but Swanson did not attend.
- Regarding each allegation: Swanson presented his proposal in open meeting and recused himself from the Board. He did not use his position to secure acceptance of his proposal, and his proposal was not accepted (NRS 281.481(2)); he did not participate in negotiation of a contract in his position as Chairman, recused himself when his proposal was being considered, and

did not attend the August 4 special Board Meeting on this topic (NRS 281.481(3)); as Chairman and Board member, Swanson has no subordinate. The general manager answers to the entire Board, not an individual Board member (NRS 281.481(9)); Swanson recused himself at the July 28 special Board Meeting when the board considered his proposal (NRS 281.481(10)); Swanson did not vote on his proposal (NRS 281.501(2)); Swanson fully disclosed at the public meetings (NRS 281.501(4)); Swanson disclosed, and was not involved in the Board's deliberation and consideration of his proposal (NRS 281.505).

## **F. PERTINENT STATUTES AND REGULATIONS:**

**NRS 281.481 General requirements; exceptions.** A code of ethical standards is hereby established to govern the conduct of public officers and employees:

\* \* \* \* \*

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281.501.

(b) "Unwarranted" means without justification or adequate reason.

3. A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any private business in which he has a significant pecuniary interest.

\* \* \* \* \*

9. A public officer or employee shall not attempt to benefit his personal or financial interest through the influence of a subordinate.

10. A public officer or employee shall not seek other employment or contracts through the use of his official position.

**NRS 281.501 Additional standards: Voting by public officers; disclosures required of public officers and employees; effect of abstention from voting on quorum; Legislators authorized to file written disclosure.**

\* \* \* \* \*

2. Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

(a) His acceptance of a gift or loan;

(b) His pecuniary interest; or

(c) His commitment in a private capacity to the interests of others.

It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.

\* \* \* \* \*

4. A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

(a) Regarding which he has accepted a gift or loan;

(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or

(c) In which he has a pecuniary interest,

without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.

**NRS 281.505 Contracts in which public officer or employee has interest prohibited; exceptions.**

1. Except as otherwise provided in this section and NRS 281.555 and 332.800, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any private business in which he has a significant pecuniary interest.

2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by such board or commission, may, in the ordinary course of his business, bid on or enter into a contract with any governmental agency, except the board, commission or body of which he is a member, if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

3. A full- or part-time faculty member or employee of the Nevada System of Higher Education may bid on or enter into a contract with a governmental agency, or may benefit financially or otherwise from a contract between a governmental agency and a private entity, if the contract complies with the policies established by the Board of Regents of the University of Nevada pursuant to NRS 396.255.

4. A public officer or employee, other than an officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers. If a public officer who is authorized to bid on or enter into a contract with a governmental agency pursuant to this subsection is a member of the governing body of the agency, the public officer, pursuant to the requirements of NRS 281.501, shall disclose his interest in the contract and shall not vote on or advocate the approval of the contract.

## **G. RESULTS OF INVESTIGATION:**

### ***Factual History:***

Jim Bentley was general manager of the Indian Hills GID prior to his resignation, effective August 3, 2005. Charles Swanson presently serves as Chair of the Board of Trustees for the Indian Hills GID.

At the June 15, 2005, regular Board Meeting and during the Board's annual evaluation of performance of General Manager Jim Bentley, Mr. Bentley proposed a contract negotiation to either continue his contract to 2009 or to look for other options. Chairman Swanson asked the Board of Trustees if they wished to continue the contract to 2009 or terminate the contract early. Further discussion developed regarding Bentley's early retirement and cancellation of his contract. Bentley made a proposal to amend his current contract to run through July 30, 2005. Discussion continued regarding replacing Bentley and what kind of severance package the District could give Bentley for cancellation of the contract. Swanson suggested a transition plan be presented to the Board of Trustees at the next meeting.

At the July 20, 2005, regular Board Meeting, discussion took place regarding the General Manager's proposal of early termination of his contract, the District's obligation to compensate the General Manager, and Chairman Swanson's proposal to resign from his position on the Board and temporarily assume the position of general manager. Swanson disclosed that he has presented a proposal for contract service under his consulting firm and that the proposal should not influence the decision regarding General Manager Bentley's proposal to amend his current management contract. Cassandra Jones, esquire, from the Law Firm of Brooke, Shaw & Zumpft, General Counsel for the District, commented that Chairman Swanson disclosed the fact that his proposal is one of many options the District might consider. Additionally, the District's General Counsel explained that Chairman Swanson's disclosure is sufficient because the removal of the General Manager is not dependent on whether or not the Trustees accept any proposal. A motion was made to deny the General Manager's proposal to amend his current contract. The motion passed by a vote of 3-2. Swanson and one other Trustee voted against the motion. Later during the Meeting, General Manager Bentley presented a letter of resignation to Chairman Swanson, effective August 3, 2005. A motion was made to

accept the resignation and to terminate the General Manager's contract. The motion carried 4 to 1. Swanson and three other Trustees supported the motion.

At the July 28, 2005, special Board Meeting, discussion occurred regarding the organizational structure of the District. Chairman Swanson disclosed and presented the Board with a written proposal on the option of engaging in professional services through his consulting firm to act as an interim General Manager. If accepted, he would resign from the Board. After his presentation, Swanson recused himself. Cassandra Jones, esquire, from the Law Firm of Brooke, Shaw & Zumpft, General Counsel for the District, commented that she was aware of Chairman Swanson's proposal before-hand because Swanson solicited advice about his conflict of interest and what his responsibility was in excusing himself from Board discussions about his proposal. Counsel explained the process for replacement of Swanson in the event he resigns from the Board. Consideration of Swanson's proposal was tabled until the Trustees had the opportunity to meet and discuss this matter with staff.

At the August 4, 2005, special Board Meeting and the August 29, 2005, regular Meeting, the Board took no further action on Swanson's proposal and decided to interview other candidates for the Interim General Manager position.

***Allegations regarding NRS 281.481(2):***

NRS 281.481(2) states:

"A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281.501.

(b) "Unwarranted" means without justification or adequate reason."

There is no evidentiary basis to support the allegation that either Bentley or Swanson were acting in violation of NRS 281.481(2). Bentley had proposed a termination and release of his contractual relationship with the District. Swanson's participation in the Board's decisions to accept Bentley's resignation and Swanson's proposal to become the interim general manager were mutually exclusive decisions. The decision to accept Bentley's resignation did not guarantee Swanson would become the interim general manager. In fact, the Board ultimately chose a different course of action regarding the interim general manager position. Swanson, relying in good faith upon the advice of legal counsel retained by the District, disclosed his intention to submit a proposal at the time the Board considered accepting Bentley's resignation, and then recused himself from discussions and voting when the Board took-up the discussion and possible action on Swanson's proposal. Swanson and Bentley both relied in good faith upon the advice of the legal counsel retained by the District regarding the steps to take in this matter.

***Allegations regarding NRS 281.481(3):***

NRS 281.481(3) states:

“A public officer or employee shall not participate as an agent of government in the negotiation or execution of a contract between the government and any private business in which he has a significant pecuniary interest.”

There is no evidentiary basis to support the allegation that either Bentley or Swanson were acting in violation of NRS 281.481(3). This allegation is clearly not applicable to Bentley since he was only acting on his own behalf when negotiating his contract release. Swanson, following advice from the District’s legal counsel, had disclosed his interest at the time he participated in the discussion and decision regarding Bentley’s resignation and recused himself from the Board decision-making process related to Swanson’s proposal to provide management services.

***Allegations regarding NRS 281.481(9):***

NRS 281.481(9) states:

“A public officer or employee shall not attempt to benefit his personal or financial interest through the influence of a subordinate.”

There is no evidentiary basis to support the allegation that either Bentley or Swanson were acting in violation of NRS 281.481(9).

***Allegations regarding NRS 281.481(10):***

NRS 281.481(10) states:

“A public officer or employee shall not seek other employment or contracts through the use of his official position.”

There is no evidentiary basis to support the allegation that either Bentley or Swanson were acting in violation of NRS 281.481(10).

***Allegations regarding NRS 281.501(2):***

NRS 281.501(2) states:

“Except as otherwise provided in subsection 3, in addition to the requirements of the code of ethical standards, a public officer shall not vote upon or advocate the passage or failure of, but may otherwise participate in the consideration of, a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:

- (a) His acceptance of a gift or loan;
- (b) His pecuniary interest; or
- (c) His commitment in a private capacity to the interests of others.



It must be presumed that the independence of judgment of a reasonable person would not be materially affected by his pecuniary interest or his commitment in a private capacity to the interests of others where the resulting benefit or detriment accruing to him or to the other persons whose interests to which the member is committed in a private capacity is not greater than that accruing to any other member of the general business, profession, occupation or group. The presumption set forth in this subsection does not affect the applicability of the requirements set forth in subsection 4 relating to the disclosure of the pecuniary interest or commitment in a private capacity to the interests of others.”

There is no evidentiary basis to support the allegation that either Bentley or Swanson were acting in violation of NRS 281.501(2). The resignation and release of Bentley from his contract is a matter independent from Swanson’s proposal. Swanson disclosed his interest and recused himself from the decision-making process regarding his proposal. The Nevada Commission on Ethics stated in its Opinion No. 99-56 (the Woodbury opinion): “[A public officer must] disclose sufficient information concerning his commitment to [any private business in which he has a significant pecuniary interest] and after making such proper disclosure, determine whether the independence of judgment of a reasonable person in his situation would be materially affected by his commitment to [his pecuniary interest]. If so, [the public officer] must also refrain from advocating the passage or failure of a matter and abstain from voting upon the matter, all in accord with NRS 281.501(2).” Although it may have been advisable for Swanson to further recuse himself from the Board’s discussion and decision regarding Bentley’s resignation, Swanson appears to have consulted with legal counsel regarding the matter in which he did have a significant pecuniary interest – his contract proposal – and after his disclosure he abstained from further participation in the Board’s decision-making process. Therefore, Swanson appears to have satisfied the requirements of NRS 281.501(2).

#### ***Allegations regarding NRS 281.501(4):***

NRS 281.501(4) states:

“A public officer or employee shall not approve, disapprove, vote, abstain from voting or otherwise act upon any matter:

(a) Regarding which he has accepted a gift or loan;

(b) Which would reasonably be affected by his commitment in a private capacity to the interest of others; or

(c) In which he has a pecuniary interest,

without disclosing sufficient information concerning the gift, loan, commitment or interest to inform the public of the potential effect of the action or abstention upon the person who provided the gift or loan, upon the person to whom he has a commitment, or upon his interest. Except as otherwise provided in subsection 6, such a disclosure must be made at the time the matter is considered. If the officer or employee is a member of a body which makes decisions, he shall make the disclosure in public to the Chairman and other members of the body. If the officer or employee is not a member of such a body and holds an appointive office, he shall make the disclosure to the supervisory head of his organization or, if he holds an elective office, to the general public in the area from which he is elected. This subsection does not require a public officer to disclose any campaign

contributions that the public officer reported pursuant to NRS 294A.120 or 294A.125 in a timely manner.”

As per the discussion under NRS 281.501(2), there is no evidentiary basis to support the allegation that either Bentley or Swanson acted in violation of NRS 281.501(4). Mr. Bentley does not appear to have had any interest to disclose – he was representing himself, and he was not a voting member of the GID Board. Mr. Swanson consulted with legal counsel and disclosed.

***Allegations regarding NRS 281.505:***

NRS 281.505 states:

“1. Except as otherwise provided in this section and NRS 281.555 and 332.800, a public officer or employee shall not bid on or enter into a contract between a governmental agency and any private business in which he has a significant pecuniary interest.

2. A member of any board, commission or similar body who is engaged in the profession, occupation or business regulated by such board or commission, may, in the ordinary course of his business, bid on or enter into a contract with any governmental agency, except the board, commission or body of which he is a member, if he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers.

3. A full- or part-time faculty member or employee of the Nevada System of Higher Education may bid on or enter into a contract with a governmental agency, or may benefit financially or otherwise from a contract between a governmental agency and a private entity, if the contract complies with the policies established by the Board of Regents of the University of Nevada pursuant to NRS 396.255.

4. A public officer or employee, other than an officer or employee described in subsection 2 or 3, may bid on or enter into a contract with a governmental agency if the contracting process is controlled by rules of open competitive bidding, the sources of supply are limited, he has not taken part in developing the contract plans or specifications and he will not be personally involved in opening, considering or accepting offers. If a public officer who is authorized to bid on or enter into a contract with a governmental agency pursuant to this subsection is a member of the governing body of the agency, the public officer, pursuant to the requirements of NRS 281.501, shall disclose his interest in the contract and shall not vote on or advocate the approval of the contract.”

There is no evidentiary basis to support the allegation that either Bentley or Swanson acted in violation of NRS 281.505. The Board considered alternative options to Swanson’s proposal. Swanson disclosed his interest, and recused himself from the decision-making process. Swanson did not “bid” on a contract. There was no request for proposal pending before the Indian Hills GID. Swanson merely presented one alternative proposal for the Board’s consideration – one that the Board did not pursue. Further, Swanson did not enter into a contract with the GID.

A review of the record (as contained in the meeting agendas and minutes) simply does not support nor lend any credibility to the allegations set forth in the complaint. There is no credible evidence that supports the Commission further investigating the allegations within the complaint.

**H. CONCLUSION:**

The Executive Director hereby recommends the panel find no just and sufficient cause exists for the Commission to hold a hearing and render an opinion on the allegations that the subjects violated NRS 281.481(2), NRS 281.481(3), NRS 281.481(9), NRS 281.481(10), NRS 281.501(2), NRS 281.501(4), NRS 281.505, and further, that the allegations be dismissed.

**DATED:** May 8, 2006

Stacy M. Woodbury  
**STACY M. WOODBURY, MPA**  
**EXECUTIVE DIRECTOR**